

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. No. 03-CR-80073-DT
Civ. No. 05-CV-70649-DT

HAZLEY DOZIER,

Defendant.

**OPINION AND ORDER DECLINING TO ISSUE
A CERTIFICATE OF APPEALABILITY**

On May 6, 2003, Defendant Hazley Dozier pleaded guilty to being a felon in possession of a firearm in violation of 18 U.S.C. §922(g)(1) and possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. §924(c)(1)(A). Defendant was sentenced to 128 months imprisonment. Defendant filed a motion under 28 U.S.C. § 2255 to vacate his sentence, claiming that his attorney was ineffective for failing to file an appeal upon his request. The court denied Defendant's motion on March 9, 2007, and Defendant appealed this ruling. On April 19, 2007, the United States Court of Appeals for the Sixth Circuit notified Defendant that it would not review Defendant's appeal until this court issued an order addressing whether to certify any issue for appeal.

Under Federal Rule of Appellate Procedure 22(b)(1), a district court that denies a motion under § 2255 must issue an order either granting or denying a certificate of appealability before an applicant may appeal. See Fed. R. App. P. 22(b)(1) ("If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.").

This court, having rendered the challenged judgment in the case at bar, is guided by 28 U.S.C. § 2253(c)(2), which directs the reviewing judge to determine if “the applicant has made a substantial showing of the denial of a constitutional right.” To demonstrate this denial, the applicant is required to show that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When a district court rejects a petitioner’s constitutional claims on the merits, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.*

In his motion under 28 U.S.C. § 2255, Defendant argued that his counsel was ineffective for failing to file a notice of appeal on his behalf as he requested. The court conducted an evidentiary hearing on March 5, 2007 to determine whether Defendant consulted with his attorney regarding an appeal. After the hearing, the court issued an order rejecting Defendant’s ineffective assistance of counsel claim, finding that Defendant did not prove that he asked his attorney to file an appeal on his behalf. Reasonable jurists would not find the court’s assessment of Petitioner’s claim debatable or wrong. Accordingly,

IT IS ORDERED that the court DECLINES to issue a certificate of appealability.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 1, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 1, 2007, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522